

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the)
Telecommunications Act)
of 1996)

CC Docket No. 96-150

Accounting Safeguards under)
the Telecommunications Act)
of 1996)

**GTE's COMMENTS IN SUPPORT OF SBC's
PETITION FOR RECONSIDERATION**

GTE SERVICE CORPORATION on behalf of its affiliated domestic telephone operating, long distance and wireless companies, having filed a Petition for Reconsideration dated February 20, 1997 (the "*GTE Petition*") with reference to the Report and Order (the "*Report & Order*"),¹ which seeks to implement the Telecommunications Act of 1996 (the "1996 Act"), hereby offers comments in support of the Petition for Reconsideration submitted by SBC Communications Inc. (the "*SBC Petition*"), as follows.

INTRODUCTION

The *GTE Petition* maintains, among other things, that the increase in regulatory burdens that would be created by the rule changes effected by the *Report & Order*

¹ Report and Order, FCC 96-490 (released December 24, 1996) in this CC Docket No. 96-150 ("D.96-150"), 1996 FCC LEXIS 7159 (the "*Report & Order*").

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conflicts with the FCC's own governing standard² and with the deregulatory thrust of the 1996 Act. GTE suggests that, rather than adopting more burdensome rules as the likelihood of adverse effects on ratepayers diminish by virtue of price caps and competition,³ the FCC should be exploring how to eliminate unnecessary regulation with regard to affiliated interests.

DISCUSSION

It is shown by the *SBC Petition* as well as the *GTE Petition* that the *Report & Order*, contrary to its disclaimers, imposes on carriers costly increases in regulatory burdens, and does this in ways and to an extent far beyond anything recognized by the *Report & Order* itself.

As pointed out by the *SBC Petition* (at i), an unexplained consequence of the *Report & Order*'s amendment of the FCC rules is to bring within the scope of the FCC's affiliate transaction rules transactions between an unregulated affiliate and the carrier's performance of unregulated activities. SBC says: "The only implied references to this rule change are embedded in the [*Report & Order*]'s ruling on a different issue ... that is, whether to apply the revised affiliate transaction rules to all affiliates (not, all transactions) or only to those affiliates required by the 1996 Act." It perfectly illustrates SBC's point that GTE is affected by the rule changes made by the *Report & Order* even though GTE is not required to create affiliate(s) by the 1996 Act.

² "[A]ny commenter urging [the FCC] to adopt more detailed accounting safeguards than those in [its] current rules or those specifically mandated by the [1996] Act bears a heavy burden in demonstrating the necessity to adopt such safeguards." *Report & Order* at paragraph 27.

³ As observed by the *Report & Order* at paragraph 145 (*footnote omitted*): "Since the adoption of the affiliate transactions rules, we have adopted price cap regulation that gives the largest incumbent local exchange carriers efficiency incentives far stronger than those the valuation methods for affiliate services sought to preserve."

As GTE stressed in its comments filed in D.96-150 on August 26, 1996 (at 13-18), the Common Carrier Bureau in the *Citizens Utility Order* had interpreted the Commission's rules in a self-contradictory way, reversing itself without acknowledgment, and requiring -- ostensibly for the purpose of protecting the ratepayer -- that certain transactions having no proper connection to regulated accounts and no impact on ratepayers be carried out as directed by the Bureau.⁴ The basis for this extraordinary action was nothing more than a possibility that in some indirect or peripheral way there might otherwise be a harmful consequence.

The *Report & Order's* treatment of this question again demonstrates -- as emphasized by the *GTE Petition* -- the reality that the rule changes adopted by the *Report & Order* contrary to its disclaimers impose on carriers costly increases in regulatory burdens, and they do so in ways and to an extent beyond anything recognized by the *Report & Order* itself. This reality raises important public policy questions not adequately dealt with in the *Report & Order* involving compliance with the intent of the 1996 Act as well as compliance with at least the spirit of the Paperwork Reduction Act of 1995, 44 U.S.C. section 3501 *et seq.*⁵

⁴ See Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Non-Regulated Costs, AAD 94-6, Memorandum Opinion and Order, 11 FCC Rcd 4676 (1996) (by Chief, Common Carrier Bureau) (the "*Citizens Utilities Order*"), *application for review denied*, Southwestern Bell Telephone Company, Application for Review of Memorandum Opinion and Order Concerning the Proper Treatment of Affiliate Transactions, AAD 96-57, Order on Review, FCC 97-33 (released February 6, 1997) (the "*Southwestern Bell Order on Review*"). See also GTE's extended discussion of the *Cerritos* matter, GTE's August 26 comments at 18-21.

⁵ See Jeffrey S. Lubbers, *Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995*, 49 Adm. L. Rev. 111 *et seq.*

Furthermore, as SBC correctly points out (at i), the Commission "has not justified this expansion of the affiliate transaction rules."

In particular, the Commission has not explained why it is necessary to expand the affiliate transaction rules to apply to non-regulated activities in order to protect LECs' regulated ratepayers against cross-subsidy.... The Part 64 cost allocation rules remove from regulation all of the costs attributable to a nonregulated activity ... and thus, it is not necessary to apply the affiliate transaction rules to further break down the nonregulated costs into the amount of costs (or revenue) attributable to each transaction with each affiliate. The Commission should issue a further notice on this issue in which it would reconsider the unstated reasons for this rules change.

Id. at i-ii.

As shown by SBC at 2 *et seq.*, the *Report & Order* makes extensive changes in 47 C.F.R. section 32.27 designed to bring transactions between the unregulated side of a carrier and an unregulated affiliate within the scope of the affiliate transactions rule. Since these rules are supposed to protect the ratepayer by eliciting information about transactions having significant effects on the regulated accounts of the company, it is not intuitively obvious why it is necessary for the FCC's accounting staff to dictate accounting treatment of unregulated transactions having no effect on the regulated accounts of the company. In the *Cerritos* matter, referred to *supra*, and again in support of SBC in the *Citizens Utilities* matter, discussed *supra*, GTE maintained there is no rational support for the Bureau's overreaching, especially inasmuch as the Bureau circled back on itself, dramatically reversing position without explanation. In this D.96-150, without discussing this question, and indeed after indicating this question would be

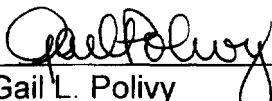
dealt with elsewhere⁶, the FCC in the *Report & Order* high-handedly rewrites the key rule section to regularize the tangled history of Bureau interpretation.

GTE again supports SBC in maintaining that the Commission's arbitrary rewriting of the rule is not only unexplained; it is not supported by a record addressing the question. GTE urges the FCC to reconsider the thrust of its *Report & Order* in the direction of greater regulatory burdens as the need for regulation diminishes, and in particular urges the FCC to reconsider whether any real logic supports the notion that the Bureau must dictate accounting entries for transactions that do not involve the regulated accounts of the company.

Respectfully submitted,

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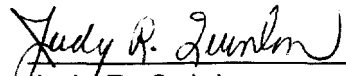
March 26, 1997

Their Attorneys

⁶ See D.96-150, Notice of Proposed Rulemaking, 11 FCC Rcd 9054, 9109-10 (1996).

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Comments in Support of SBC's Petition for Reconsideration" have been mailed by first class United States mail, postage prepaid, on March 26, 1997 to the parties on the attached list.


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